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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

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JEANAL THICKS, CLERK

BY: B. Chamberlain

IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA,

V1300CR201080049

Plaintiff,

**STATE'S RESPONSE TO DEFENDANT'S
MOTION IN LIMINE (NO. 2) TO EXCLUDE
EVIDENCE OF DEFENDANT'S FINANCIAL
CONDITION AND BUSINESS PRACTICES
PURSUANT TO ARIZ. R. EVID. 403 AND 404**

vs.

JAMES ARTHUR RAY,

Defendant.

(The Honorable Warren Darrow)

The State of Arizona, through undersigned counsel, requests that this Court deny Defendant's Motion In Limine to Exclude Evidence of Defendant's Financial Condition and Business Practices. The following Memorandum of Points and Authorities support this response.

MEMORANDUM OF POINTS AND AUTHORITIES

The Facts:

On October 8, 2009, Yavapai County Sheriff's Office responded to the Angel Valley Retreat in Sedona, Arizona, for a report of numerous people in various stages of medical distress. Upon arrival, detectives were informed two persons had died after being transported to the Verde Valley Medical Center and other individuals were in altered levels of consciousness and having difficulty breathing.

The subsequent investigation revealed the deaths occurred after approximately 55 people took part in a two-hour ceremony in a sweat lodge. In addition to James Shore and Kirby Brown,

1 the two people who died, numerous others were hospitalized. On October 17, 2009, a third
2 participant, Liz Neuman, died.

3 The sweat-lodge ceremony was part of a five-day seminar titled "Spiritual Warrior"
4 sponsored by James Arthur Ray, a motivational speaker and author of some renown. The Yavapai
5 County Sheriff's Office originally initiated an accidental death investigation. The investigation was
6 subsequently upgraded to a homicide investigation.
7

8 The investigation established Defendant had conducted prior sweat lodge events, and
9 knew participants in those prior sweat lodge events had suffered adverse medical problems during
10 the sweat lodge event, including at least one prior participant in 2005 who was transported to the
11 hospital. Despite that knowledge, Defendant continued to operate the lucrative¹ sweat lodge
12 events, and assured participants that, although they might feel like they were going to die inside
13 the sweat lodge, they would not. Defendant also discouraged participants from helping others
14 inside the sweat lodge, assuring the participants that Defendant's staff would provide any
15 necessary assistance.
16

17 On February 3, 2010, the Yavapai Grand Jury indicted Defendant on three counts of
18 manslaughter for the deaths of victims Kirby Brown, James Shore and Elizabeth Neuman

19 **Legal Argument:**

20 **I. The law:**

21 All relevant evidence is admissible unless it is specifically precluded by rule or statute.
22 Rule 402, Ariz. R. Evid.; *State v. Rivera*, 152 Ariz. 507, 517-18, 733 P.2d 1090, 1100-01 (1987);
23 *State v. Fermane*, 185 Ariz. 222, 225, 914 P.2d 1314, 1317 (App. 1995). Evidence is relevant (has
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¹ Approximately 47 people participated in the 2009 sweat lodge event near Sedona as fee paying participants, many paying Defendant up to \$10,000 to attend.

1 probative value) if it has any tendency to make the existence of any fact that is of consequence
2 to the determination of the trial more or less probable than it would be without the evidence. Rule
3 401, Ariz. R. Evid.; *State v. Runnigeagle*, 176 Ariz. 59, 69, 859 P.2d 169, 179 (1993); *State v.*
4 *Cook*, 170 Ariz. 40, 57, 821 P.2d 731, 748 (1991). "This standard of relevance is not particularly
5 high." *State v. Oliver*, 158 Ariz. 22, 28, 760 P.2d 1071, 1077 (1988).

6
7 Even relevant evidence may be excluded at the discretion of the trial court if its probative
8 value is "substantially outweighed" by the danger of unfair prejudice or its potential to mislead
9 the jurors. Rule 403, Ariz. R. Evid. "Unfair prejudice 'means an undue tendency to suggest
10 decision on an improper basis . . . such as emotion, sympathy or horror.'" *State v. Schurz*, 176
11 Ariz. 46, 52, 859 P.2d 156, 162 (1993) (quoting Fed. R. Evid. 403, Advisory Committee Note,
12 "Unfair prejudice 'means an undue tendency to suggest decision on an improper basis.')" The
13 rules of evidence, however, favor admissibility of evidence, requiring the evidence to be viewed
14 in the "light most favorable to its proponent maximizing its probative value and minimizing its
15 prejudicial effect." *State v. Kiper*, 181 Ariz. 62, 65, 887 P.2d 592, 595 (App. 1994); *State v.*
16 *Castro*, 163 Ariz. 465, 473, 788 P.2d 1216, 1224 (App. 1984).

18 **II. Defendant's business practices are relevant to Defendant's motive and the mental**
19 **state required for the crime.**

20 The State intends to introduce evidence of Defendant's business practices to include
21 Defendant's sales practices and refund policy, the cost of the Spiritual Warrior Seminar and
22 Defendant's financial status. Contrary to Defendant's assertions, this evidence will not be
23 presented to elicit any animus from the jurors due to Defendant's professional or financial
24 success. The State agrees that such an appeal is "improper and has no place in a court room."
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1 *United States v. Stahl*, 616 F.2d 30, 33 (2nd Cir. 1980). However, case law is clear that there are
2 instances when evidence of a defendant's financial circumstances is relevant and admissible. *See*
3 *United States v. Quattrone*, 441 F.3d 153, 187 (2nd Cir. 2006) ("Evidence of Quattrone's
4 compensation for 1999 and 2000 was relevant to Quattron's motive to protect his reputation and
5 that of CSFB's Tect group."); *United State's v. Logan*, 250 F.3d 350, 369 (6th Cir. 2001)
6 ("[I]ncome evidence was relevant to demonstrate that financial gain was the motive for the crime
7 charged.").

8
9 As noted by Defendant, the State is required to prove Defendant acted recklessly in
10 placing approximately 55 people into a sweat lodge after they had fasted for 36 hours and that this
11 recklessness ultimately resulted in the deaths of Liz Neuman, Kirby Brown and James Shore.
12 During trial, the evidence will show that Defendant continually sought to increase participation in
13 his seminars through high pressure sales techniques and that he also believed that in order to
14 attract participants who were willing to pay the high cost for attending his events, he needed to
15 "push the envelope" by offering events where participants faced extreme physical challenges, i.e.,
16 breaking cement blocks, walking on burning coals or broken glass, bending rebar with their
17 necks, fasting for 36 hours in the desert and ultimately, taking part in a two to three hour sweat
18 lodge. In seeking to "push the envelope," Defendant developed activities with high risks of injury
19 and/or physical distress and failed to provide for safeguards to both prevent and address injuries
20 and/or physical distress. When injuries did occur as in the prior sweat lodge events, Defendant
21 minimized the danger, refused to acknowledge any responsibility, and took steps to minimize the
22 public's (and his event participants') knowledge of the injuries in order to continue to attract
23 participants. Finally, the financial evidence will support the Defendant's motive to downplay any
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1 risks involved and to continue to conduct activities without regard to the substantial dangers they
2 posed to the participants.

3 All of the above evidence is relevant to Defendant's mental state and motive for his
4 actions that ultimately lead to the victims' deaths and the charges in this case.

5 **III. The cost of the event is relevant to the victim's frame of mind.**

6
7 The cost of the event is also relevant to the victims' frame of mind and their reluctance to
8 leave the sweat lodge. Defendant has repeatedly stated no one was forced to stay in the sweat
9 lodge. However, the fact is that most participants had paid over \$9,000 to attend Spiritual
10 Warrior. The State will present evidence to support the conclusion that this large investment
11 compelled them to participate fully in all of the events, including the sweat lodge. Moreover, as
12 noted above, Defendant continually emphasized that his events were unique and extreme. Over
13 and over, the State has heard comments relating to Defendant's description of the sweat lodge as
14 hotter and more extreme than any other the participants might have experienced. Most of the
15 participants expected they would be pushed physically and that this physical struggle was
16 necessary to ultimately received the full benefits of the event, i.e., they believed they needed to
17 participate fully to "get their money's worth."
18

19 **IV. State's request to supplement response.**

20 The trial in this matter was recently continued and a new trial date has not been sent. The
21 State requests leave to supplement this response prior to any new motion deadline set by this
22 Court. The State further believes judicial economy will be best served by scheduling all
23 evidentiary hearings at a time closer to trial. At this pretrial stage, it is improper to preclude all
24 evidence of wealth or economic circumstances on the mere speculation that such evidence could
25 get introduced and exploited in a prejudicial manner.
26

Office of the Yavapai County Attorney

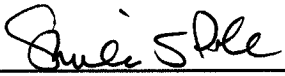
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1 Court. The State further believes judicial economy will be best served by scheduling all
2 evidentiary hearings at a time closer to trial. At this pretrial stage, it is improper to preclude all
3 evidence of wealth or economic circumstances on the mere speculation that such evidence could
4 get introduced and exploited in a prejudicial manner.

5 RESPECTFULLY submitted this 2d day of August, 2010.


6
7
8 By 
9 SHEILA SULLIVAN POLK
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11 COPIES of the foregoing emailed this
12 2nd day of August, 2010:

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